THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14828 OF 2006

DATED: 14th AUGUST, 2006.

Between:

Andhra Pradesh State Trading Corporation Ltd.,
Rep.by its Vice-Chairman and Managing
Director, Hyderabad. … Petitioner

And

Syndicate Bank, rep. by its Chief
Manager/Authorised Officer,
Nizam Shahi Road, Hyderabad. .. Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14828 OF 2006

ORDER :

The Andhra Pradesh State Trading Corporation Limited, an undertaking of the Government of A.P. is the petitioner which seeks a Writ of Mandamus declaring the action of the respondent Bank in declaring the petitioner's account as Non-Performing Asset (NPA) and in invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') vide notice dated 14-10-2005 as arbitrary and illegal.

The facts in brief as pleaded by the petitioner are as under :

The petitioner entered into an agreement of agency as Memorandum of Understanding dated 29-9-2003 with one M/s. Auro Logistics Limited, Chennai according to which the said M/s. Auro Logistics Limited would assist in the export operations of the petitioner Corporation and receive half of the net profits for its service. Pursuant to the said Memorandum of Understanding, M/s. Auro Logistics Limited shipped 41,950 MT of Iron Ore to a foreign buyer at Hongkong on 27-3-2004. It is alleged that the said M/s. Auro Logistics Limited had fraudulently obtained all the export documents including Bill of Lading in its own name and the said export documents were accepted by the respondent Bank without reference to the petitioner. Thereafter, the respondent Bank having obtained a indemnity bond from the then General Manager of the petitioner Corporation discounted the bill and credited a sum of Rs.11,27,88,028-50 ps to the petitioner's account,

after deducting their charges and interest out of the said sum. On the next day, M/s. Auro Logistics Limited insisted on payments of its share of profit and obtained a cheque for Rs.1.5 crores though the transaction was incomplete. The petitioner alleged that fraud was played by the officials of the respondent Bank in collusion with the then General Manager, Exports and Imports of the petitioner Corporation in transmitting the export documents handed over by M/s. Auto Logistics Limited without proper scrutiny. It is stated that the then General Manager of the petitioner Corporation was suspended and a vigilance enquiry was also initiated.

It is alleged that the respondent Bank forwarded the export documents with great haste to the Foreign Bank claiming reimbursement as per letter of credit. However, the Foreign Bank pointed out certain discrepancies including non-receipt of original documents particularly the original Bill of Lading and refused to make the payment of Letter of Credit amount. However, in spite of requests made by the petitioner Corporation to send the original Bill of Lading, the respondent Bank failed to respond. On the other hand, the respondent Bank started insisting upon the petitioner to pay the discounted bill amount. The petitioner by letter dated 24-5-2004 informed the respondent that they were not at fault for non-receipt of documents and that the dispute was only between the paying bankers and the negotiating bank. However, the respondent Bank vide letter dated 25-5-2004 crystallized the export bill and called upon the petitioner to pay the same.

Subsequently, on 14-7-2004 the respondent addressed a letter to the petitioner calling upon them to take urgent steps to liquidate the liability to avoid classification as a Non-Performing Asset as per the Circular of the Reserve Bank of India, dated 22-8-2003. Though the petitioner gave a reply dated 15-7-2004 reiterating that they are not liable for payment of outstanding bills, the respondent Bank vide letter dated 28-9-2004 informed the petitioner that its account was classified

as NPA. The respondent Bank had also called upon the petitioner to remit a sum of Rs.11,82,88,932/- along with interest at 16% per annum. Thereafter, the respondent Bank started addressing letters to other Banks stating that since the petitioner's account has been classified as NPA, they should close the petitioner's account with them. The respondent Bank had also refused to return the documents in respect of the dishonoured bill unless the bill amounts as demanded is paid. In the circumstances, the petitioner Corporation filed O.S.No.248 of 2005 on the file of the Court of Chief Judge, City Civil Court, Hyderabad seeking a decree for recovery of Rs.13,21,43,907/- against M/s. Auro Logistics Limited and the respondent Bank. Initially, by order dated 2-8-2005 in I.A.No.2337 of 2005 a temporary injunction was granted restraining the respondent Bank from initiating any steps whatsoever to recover the amount credited to the plaintiff's account on the basis of the export documents negotiated by it. However, subsequently the order of temporary injunction was vacated on 23-9-2005 and the same was confirmed by the appellate Court. Even the Revision Petition preferred by the petitioner Corporation was dismissed by this Court.

Thereafter, the respondent Bank having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, issued a notice dated 14-10-2005 under Section 13 (2) calling upon the petitioner Corporation to discharge their liabilities in full within a period of 60 days. The petitioner Corporation submitted their objections vide letter dated 29-11-2005 and requested the respondent Bank to withdraw the notice under Section 13 (2) of the Securitisation Act. However, the respondent Bank by letter dated 6-12-2005 reiterated its demand for payment. They also sent another letter dated 7-12-2005 informing the petitioner as under :

> *"You have raised various objections / you have made representations, which calls for a detailed study at our end to inform our stand to you. Since the time available*

is very short, we could be furnishing our reply with our reasons for your objections / statement within 10 days. Till then, this may be treated as our interim reply."

Though no further communication was received from the respondent Bank with regard to the objections raised by the petitioner, by letter dated 28-6-2006 the petitioner was informed the balance outstanding and was asked to acknowledge the liability.

Hence, this writ petition contending inter alia that the entire action of the respondent Bank is arbitrary, illegal and unreasonable. It is contended that the respondent Bank failed to act fairly and having committed several lapses in processing and forwarding the export documents, the respondent Bank has been seeking to victimize the petitioner. It is also contended that since the respondent Bank failed to respond to the objections / representation made by the petitioner within the time prescribed, it is precluded from taking any further action under the Securitisation Act. It is further contended that the very guidelines prescribed by the Reserve Bank of India for treating the account as NPA is not applicable to the case on hand since the amount alleged to be due is seriously contested and the issue is the subject-matter of O.S.No.248 of 2005. It is also contended that the petitioner being a Corporation wholly owned by the State Government, the action of the respondent Bank in classifying its account as NPA is highly arbitrary and unwarranted since the said provisions are meant for invoking in the case of a debtor who is practically insolvent.

I have heard the learned Counsel for both the parties and perused the entire material placed before this Court.

From the facts narrated above, it is clear that the petitioner is alleging fraud and collusion between the officials of the respondent Bank and M/s. Auro Logistics Limited in accepting and forwarding the export documents. Several lapses have been alleged against the respondent Bank and it is contended that since the respondent Bank

itself is responsible for the mishandling of the entire process, it is jointly and severally liable along with M/s. Auro Logistics Limited and the foreign company to make good value of goods together with interest. It is not necessary for this Court to express any opinion as to the correctness of the said allegations which are categorically denied by the respondent in their counter-affidavit. The said issue which is the subject-matter of O.S.No.248 of 2005 requires to be decided on the basis of the evidence that may be produced by both the parties.

It is also not necessary for this Court to express any opinion at this stage as to the alleged violation of Section 51 of Bills of Exchange Act. As a matter of fact, the respondent in its counter-affidavit pleaded that Section 51 of Bills of Exchange Act is not at all applicable to the transaction in question. The alleged fraud on the part of its officials was also categorically denied by the respondent Bank in its counter-affidavit. It is further explained by the respondent Bank that the Bank having received a sum of Rs.11,27,88,028-50 ps on discount of the export bill is bound to pay the same as per the document executed in respect of the loan facility. It is further stated that as per the norms of the Reserve Bank of India if the liability remains unpaid with interest and costs, it will be treated as NPA and accordingly by letter dated 28-9-2004 the petitioner was informed that its account was classified as NPA. The objections raised by the petitioner vide letter dated 29-11-2005, pursuant to notice under Section 13 (2) of the Securitisation Act, were considered and a reply was issued on 7-12-2005 followed by another letter despatched on 7-12-2005 itself assigning reasons as required under sub-section (3A) of Section 13 of the Securitisation Act. Thereafter, since the Corporation has approached the respondent with certain proposals for settling the issue, no further steps have been taken under Section 13 (4) of the Securitisation Act.

As noted above, several allegations made by the petitioner with

regard to handling of the export documents by the respondent Bank and its liability to make good the alleged loss suffered by the petitioner Corporation is the subject-matter of O.S.No.248 of 2005 pending before the Court of Chief Judge, City Civil Court, Hyderabad.

So far as the present writ petition is concerned, the entire challenge is as to the steps initiated by the respondent Bank by invoking the provisions of the Securitisation Act. It is not in dispute that in response to the notice under Section 13 (2) of the Securitisation Act, the petitioner made a representation raising certain objections including that the action of the respondents in classifying its account as NPA is untenable. The specific case of the respondents is that the account of the petitioner was classified as NPA strictly in accordance with the Norms of the Reserve Bank of India and the same was informed to the petitioner on 7-12-2005 in terms of sub-section (3A) of Section 13 of the Securitisation Act. However, the petitioner has never chosen to challenge the same on any ground whatsoever.

Though under the provisions of the Act, once the borrower fails to discharge his liability within the period specified in sub-section (2) of Section 13 of the Securitisation Act, it is open to the secured creditor to exercise the rights under sub-section (4) of Section 13 of the Securitisation Act to recover the secured debt, admittedly, the respondent has not taken any such steps so far. In the counter-affidavit, the respondent Bank had explained that the letter dated 28-6-2006 under which the petitioner was called upon to acknowledge the liability was only a routine practice of the Banking institutions. At any rate, it does not fall within the scope of sub-section (4) of Section 13 of the Securitisation Act and therefore the apprehension of the petitioner that the respondent Bank is likely to resort to coercive steps appears to be without any basis.

In the circumstances, the writ petition at this stage without there being any cause of action is premature.

Accordingly, the Writ Petition which is filed against the notice issued under Section 13 (2) of the Securitisation Act is dismissed as not maintainable. However, it is made clear that no coercive steps shall be taken against the petitioner Corporation without following the procedure prescribed under the Act and the Rules made thereunder. No costs.

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G. ROHINI, J.

Dt. 14-8-2006
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